

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ALBERT C. BURGESS, JR.,

Case No. 23-CV-3773 (NEB/JFD)

Petitioner,

v.

ORDER ACCEPTING REPORT AND
RECOMMENDATION

WARDEN, Rochester FMC,

Respondent.

Pro se plaintiff Albert Burgess petitions for a writ of habeas corpus under 28 U.S.C. Section 2241, alleging that prison officials denied him medical care and seeking immediate release from custody. In the Report and Recommendation ("R&R"), United States Magistrate Judge John F. Docherty recommends that Burgess' petition be denied and this matter be dismissed. (ECF No. 6 ("R&R").) Burgess objects to the R&R. (ECF No. 9.) Based on a *de novo* review, the Court overrules Burgess' objection and accepts the R&R.

In his petition, Burgess alleges that prison officials failed to treat his medical problems, subjecting him to cruel and unusual punishment under the Eighth Amendment. A habeas corpus petition is not the appropriate vehicle to plead such a claim. Instead, a claim relating to the conditions of confinement, such as inadequate medical care, should be plead through a civil complaint. *Spencer v. Haynes*, 774 F.3d 467, 470–71 (8th Cir. 2014). If a *pro se* federal prisoner seeks relief that is not available through

a habeas petition, the Court may invite the petitioner to convert the habeas claim into a civil action. *See id.* at 471. Burgess' petition, however, seeks habeas relief. (*See* ECF No. 1 at 1 (requesting the Court to order Burgess "released" from prison).) Because the requested relief is not available in a traditional civil action, the Court will not treat Burgess' petition as a civil complaint. Burgess may file any meritorious complaints about his confinement in a separate civil action.

CONCLUSION

Based on all the files, records, and proceedings in this case, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation (ECF No. 6) is ACCEPTED;
2. Burgess' Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (ECF No. 1) is DENIED; and
3. The action is DISMISSED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 11, 2024

BY THE COURT:

s/Nancy E. Brasel

Nancy E. Brasel
United States District Judge